



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **Docket No. FTA-2016-0004**

#### **Notice of Proposed Buy America Waiver for Ductless Mini-Split System Air Conditioning Systems.**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Proposed Buy America waiver and request for comment.

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**SUMMARY:** The Federal Transit Administration (FTA) received requests from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of an Enviroair inverter-driven ductless mini-split system air conditioner, from the York Adams Transportation Authority (YATA) for ductless split system air conditioning units, from Key West Transit (KWT) for a ductless mini-split mechanical system for the City of Key West Public Transportation Facility, and from the Springfield Redevelopment Authority (SRA) for ductless mini-split air conditioners for the Union Station Regional Intermodal Transportation Center in Springfield, Massachusetts. IPTC is constructing its Downtown Transit Center which is expected to be Leadership in Energy and Environmental Design (LEED) certified and will incorporate many sustainable and energy efficient elements. The Enviroair inverter-driven ductless mini-split system air conditioner will contribute to the building's efficiency and is essential to achieving silver LEED certification. YATA is currently constructing a new Operations and Maintenance Facility in York, Pennsylvania and seeks to install several ductless air conditioning units at the facility. KWT is finishing construction on the bus transit operation and maintenance facility, which is a U.S. Green Building Council LEED

project. The building contains many sustainable and efficient elements, including a variant refrigerant flow (VRF) heating, ventilation, and air conditioning (HVAC) system. KWT seeks a waiver for this VRF ductless mini-split mechanical system because there is no domestic manufacturer. The SRA seeks a waiver for ductless mini-split air conditioners as part of the renovation of the existing Terminal Building and the construction of a six story garage at the Union Station Regional Intermodal Transportation Center, because there is no domestic manufacturer. IPIC, YATA, KWT, and SRA seek waivers for these air conditioner systems because there are no domestic manufacturers. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver requests and seeks public comment before deciding whether to grant the requests. If granted, the waivers would apply to one-time procurements only for the specific air conditioning systems identified in the waiver request.

**DATES:** Comments must be received by [INSERT DATE 7 DAYS AFTER PUBLICATION].

Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2016-0004:

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. Fax: (202) 493-2251.
3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2016-0004. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT**: Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or [Laura.Ames@dot.gov](mailto:Laura.Ames@dot.gov).

**SUPPLEMENTARY INFORMATION**: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant non-availability waivers to the Indianapolis Public Transportation Corporation (IPTC) for the procurement of an Enviroair inverter-driven ductless mini-split system air conditioner, to the York Adams Transportation Authority (YATA) for the procurement of ductless split system air conditioning units which are needed at the new Operations and Maintenance Facility, to Key West Transit (KWT) for the procurement of a variable refrigerant flow (VRF) ductless mini-split mechanical system, and to the Springfield Redevelopment Authority (SRA) in Springfield, Massachusetts for the procurement of nine ductless mini-split air conditioners for the Union Station Regional

Intermodal Transportation Center. IPTC, YATA, KWT, and SRA requested Buy America non-availability waivers on May 5, 2015, July 26, 2015, December 2, 2015, and on March 9, 2016, respectfully. All seek non-availability waivers since none of these air conditioning systems are produced in the United States in sufficient and reasonably available quantities or of satisfactory qualities. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

By way of background, IPTC is constructing its Downtown Transit Center and the contractor and subcontractor hired for the project, Weddle Bros. Building Group, LLC and Commercial Air Inc., previously certified Buy America compliance. After awarding the contract, Commercial Air became aware that the inverter-driven ductless mini split system air conditioner selected for the center, was non-compliant. Enviroair manufactures this air conditioning system in China, although certain equipment is stocked and shipped from Utica, New York. IPTC selected the Enviroair system, which will be installed in the transit center's information technology room, because it will keep the room constantly cool and is the only way to cool the room in the space provided. IPTC also hopes to receive Silver LEED certification for the transit center and the Enviroair system is critical for achieving this certification. IPTC identified six other ductless mini-split air condition system manufacturers, all of which are manufactured abroad.

YATA seeks to install multiple ductless split system air conditioning units in its Operations and Maintenance Facility. These units will regulate environmental conditions in areas with specific temperature and/or humidity requirements, such as in server rooms or elevator machine rooms, or in rooms where conventional ductwork is not possible. YATA's successful bidder certified Buy America compliance, although later learned that the units from ECR international-EMI-USA of Utica, New York, are in fact manufactured abroad. YATA identified

one ductless split system unit that is manufactured in the U.S. by Modine, however, this unit has a larger capacity than YATA's project requirements for the Operations and Maintenance Facility. Use of this unit would result in constant compressor cycling and a limited lifespan. Moreover, YATA states that it cannot use a standard split system unit as an alternative to the ductless split system, because a standard system is incapable of treating ventilation air and the required ductwork cannot be installed in locations that need environmental control. Therefore, no domestic manufacturer exists that would satisfy YATA's project needs.

KWT is completing construction of its City of Key West Public Transportation Facility, which is a U.S. Green Building Council LEED project and includes many sustainable and efficient elements, including that of the HVAC system. The project consists of an 18,300 square foot bus operations and maintenance building, a 2,100 square foot bus wash building, fueling station, and parking facilities. The facility will serve as the City's transportation operations center and will provide maintenance, repair, cleaning, and bus parking facilities. The front portion of the main building includes offices for administration and operations, while the rear portion provides space for bus maintenance, repairs and cleaning, parts storage and technician amenities.

According to KWT's waiver request, the HVAC system is Buy America-compliant, with the exception of the VRF mechanical system which will be placed in three of the electrical, mechanical, and server rooms in the new facility. KWT states that these rooms must be able to function separately from the main operations building. KWT also is building this facility to be LEED silver certified and the energy-efficient VRF system will help KWT attain this certification. The VRF system sought will also better accommodate spatial constraints since the new facility is surrounded by a landfill, school bus parking lot, and other construction projects.

It is also located in a highly-trafficked area, which limits the footprint of the project. Unlike other HVAC systems, the ductless mini-split system will be able to fit into the available space.

KWT is installing a Carrier ductless mini-split system in the facility. Before selecting this system, KWT conducted extensive research and reached out to domestic manufacturers, however, KWT was unable to find a domestically manufactured mini split air conditioning system. In fact, KWT states that it contacted the remaining America manufacturer of VRF HVAC systems and this manufacturer ceased production two years ago. As a result, KWT procured the Carrier ductless mini-split air conditioning equipment for the facility as no domestic manufacturer was available.

SRA is constructing the Union Station Regional Intermodal Transportation Center, which includes renovation of the existing Terminal Building and the construction of a six story parking garage. SRA is seeking to procure nine ductless mini-split air conditioners for the construction project. Each building within the transportation center will have its own HVAC system. SRA states that it is necessary to install ductless mini-split air conditioners in each individual room in order to maintain environs in each room. The air conditioners will be independent of other heating and cooling systems and will be backed up by a generator. Initially, SRA's contractor thought that Trane's product was Buy America-compliant. Subsequently, however, Trane notified SRA that its product was mislabeled and is actually foreign-made. SRA also contacted 8 other companies who manufacture ductless mini-split air conditioners, although none of these companies manufacturer the product domestically. As a result, SRA is seeking a non-availability waiver for the ductless mini-split air conditioners as there is no domestic manufacturer.

FTA also conducted a scouting search for ductless air conditioning systems through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search identified two domestic manufacturers as potential

matches for this opportunity: Kentuckiana Curb Company/KCC International in Louisville, Kentucky and Climate Conditioning Company, Inc./Liebert also in Louisville, Kentucky. The manufacturers identified either produce similar products to the ductless air conditioning systems, possess the capabilities to produce ductless air conditioning systems, have produced an item similar to ductless air conditioning systems in the past, or have expressed a business interest in producing ductless air conditioning systems. Upon request from FTA, IPTC and YATA reached out to these potential domestic suppliers. However, neither company manufactures the specific mini-split air conditioning systems sought and as described in this Notice. As such, IPTC and YATA are pursuing their non-availability waiver applications. FTA did not reach out to KWT or SRA as they submitted their waiver requests after scouting was complete.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

The purpose of this Notice is to publish IPTC's, YATA's, KWT's, and SRA's requests and to seek public comment from all interested parties in accordance with 49 U.S.C.

5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the requests, including the merits of the requests. A full copy of the request has been placed in docket number FTA-2016-0004.

Issued on March 16, 2016.

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Dana Nifosi  
Deputy Chief Counsel

[FR Doc. 2016-06416 Filed: 3/21/2016 8:45 am; Publication Date: 3/22/2016]